



March 21, 2011

Kate Hart, Chair
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

RE: Comments on Irrigated Lands Regulatory Program Framework

Dear Chair Hart:

The Sacramento Valley Water Quality Coalition (SVWQC) has thoroughly reviewed the Irrigated Lands Regulatory Program (ILRP) Framework and recognizes the efforts made by Regional Board staff to create an economically viable program that protects water quality while responding to comments submitted on the Staff Recommended Alternative released last July. In attempting to find a balance between these two important goals unfortunately a Framework has been developed that is convoluted, contradictory, and costly. In several instances the Framework ratchets up regulation where no reason exists for ramped up requirements. This at a time when Congress, the California legislature, and Governor Jerry Brown have undertaken efforts to reduced regulatory burdens to bring California out of the protracted economic downturn.

Three elements of the Framework exemplify the confusing, costly and counterproductive nature of the document, they are; 1) Farm Water Evaluations; 2) Electronic Data Submittal; and 3) Other interested stakeholders' involvement in developing management plans. The egregious nature of these three elements outweighs any intended flexibility and cost savings staff tried to include in the Framework.

As detailed below Farm Water Evaluations are duplicative of information all ready gathered and submitted to the Regional Board. Submittal of electronic data presupposes every agricultural operation has the technological capability to achieve this and fails to calculate the cost of compliance and the Regional Board cost to collect this information from 50,000 growers. Furthermore, there is no protection against other interested stakeholders forcing the Regional Board's hand to use this as a regulatory compliance tool, dictating what management practices should be used. It is likely that Regional Board will spend far more on an electronic data gathering system than it is worth. The quality of the data will not be substantially higher than is currently provided by the Coalitions.

Other interested stakeholders simply do not have standing in the permitting process. The potential for protracted deliberations on management plans is very real and will be counterproductive to improving water quality.

CONVOLUTED

The addition of another tier in the Framework is positive. (Page A- 5, Section 4.2) The application of the tiers and beneficial uses however raises several questions that need clarification.

- Would the existing **SVWQC Management Plan structure** (prioritization of constituents of concern from toxicity to DO and pH) be permitted under the Framework?
- **Are Surface and Ground Water Quality Management Plans (SQMP and GQMP) only required in Tier 3 areas?** Are they used to define the Tier 1, 2 and 3 areas? Will the monitoring data be the determining factor in evaluating what tier an "area" falls under?
- Footnote 6 on Page A-4 appears to use the **303(d) Impaired Waterbodies list to determine "threat to water quality"**. Will a 303(d) listed waterbody for an unknown source prevent a waterbody from being listed Tier 1? The 2010 303(d) list has Arcade Creek running through the City of Sacramento listed as impaired for diaznon from agriculture. No agriculture is in the area and the potential of spray drift is remote. Coalition monitoring data is more current and accurate than the Lines of Evidence in the 303 (d) list.
- **Are existing surface water quality management plans automatically designated Tier 3?** The SVWQC Management Plan has 64 lower priority (Dissolved Oxygen, pH, E. coli) constituents of concern for which source evaluation is currently underway. In the Foothills and upper watersheds these are the only exceedances of water quality objectives. For these constituents of concern a Tier 1 or Tier 2 designation is the appropriate classification.
- Are **Conditional Waivers of Waste Discharge** automatically considered Tier 1?
- Are those waterbodies which **SVWQC Management Plan obligations have been deemed complete by the Executive Officer now Tier 1 for surface water if no other exceedances have occurred?**

CONTRADICTORY

- **The document uses the term "area", "management area" (Page A-7), and "geographic area", can you explain the differences between those terms?** It is unclear which "area" the Regional Board would base its evaluation of management objectives plans, and surface water and ground water quality management plans on to determine "relative" and "potential" threat in a "given area and data availability".

- **"How Tiers are applied"**, on Page 4, the Framework states tier classification will be "evaluated separately for different parameters, in different areas" yet on Page A-5 the Framework states in 4.3 "An area would not be designated as Tier 1, if Tier 2 or 3 constituents were in the area," Also the footnote on Page A-7, "...an area could have Tier III requirements in surface water for chlorpyrifos, and Tier 1 requirements for all other constituents in surface and groundwater." How are these statements consistent?, and on Page A-25, Section 10.1 there is no tiering of beneficial uses as in the Straw Proposal.
- Why do **Management Objectives Plans** have to be prepared in Low threat (Tier 1) areas? (Page A -16, Section 7, number 1)? Doesn't the water quality monitoring results or the absence of hydrogeologically vulnerable ground water areas substantiate the effectiveness of management practices? Section 7.5 (Surface Water Quality Management Plan) on Page A-17 states, "Monitoring and other collected information will be used to assess the effectiveness of management practices and whether the BPTC or best efforts standard has been achieved."

COSTLY

- **Unintended Costs of Multiple Regulatory Mechanisms** - The carving out of 3 separate Conditional Waivers of Waste Discharge for the foothills, irrigated pasture and certified organic farmers and a General Waste Discharge Requirement (WDR) for the Sacramento Valley creates unintended costs for growers . First it will create small pockets within geographic regions that must either pay their own monitoring and management plan costs under a separate order or require the geographic order to establish separate rates to cover the costs. Increasing the cost on low value crop acreage is not the intent of the Framework but will be the outcome. (Page A-9, Section 4.5) Rather than have separate silos of Waivers and WDRs a grower should have choice to belong to one, to avoid having to pay for coverage in more than one program.
- **Farm Evaluations Costly Duplication** - The goal of balancing cost and achieving water quality objectives by avoiding duplication of requirements already covered by existing agencies (Department of Pesticide Regulation) and programs (GAMA) is positive. (Page A- 21-22, Section 8.4) The failure to apply that same principle in compiling management practices by requiring every agricultural operation to complete a Farm Evaluation is duplicative and costly. (Page A-16, Section 7.3) For instance, a strict reading of the Framework would mean that El Dorado and Napa growers would have to do a Farm Evaluation even though that work was done as part of their Pilot Management Practices programs. Is this a correct interpretation of the Framework?
- **Electronic Data Submittal Costly, Confusing and Counterproductive** - The Framework states the "Board intends to maximize the use of electronic data submittals from individual dischargers, "and growers will be allowed to enroll directly with the Regional Board. Not only is this precursor for direct regulation by the Regional Board, it does not eliminate the costs. Participant lists are necessary to invoice participants for monitoring and management plan costs. Where is the cost savings? (Page A -14, Paragraph 1)

- **Public Input on Water Quality Management Plans Delays Action to Improve Water Quality** (Page A-19, number 8) – This is a significant revision to the current management plan review and approval process. Previously, the SVWQC Management Plan was approved after a thorough review by the Executive Officer and Regional Board staff. Requests for changes are thoroughly reviewed by staff before the Executive Officer approves a change. In a recent instance, Regional Board staff undertook a 7 month review of monitoring data and source evaluation information the SVWQC had prepared over a two year period, before recommending to the Executive Officer that the Management Plan was complete. The potential exists for political science to dilute sound science delaying approvals by the Regional Board and Executive Officer on actions. This is not beneficial to improving water quality.

Explain when and how “Public Input on Water Quality Management Plans” by other interested stakeholders would take place? What types of management plan decisions would they be involved in?

- **Baseline Summary and Management Objectives Plan Not ALWAYS Cost Effective** - The preparation by 3rd party groups of a baseline summary and assessment of management practices every 5 years in Tier 1 and Tier 2 is potentially a cost saving measure over the current program depending on what is required . In the Foothills, Coast Range, and upper watersheds where monitoring is limited by seasonal influences, and the use of pesticide is limited monitoring requirements and costs are less and savings might be minimal. Eliminating surface water quality monitoring costs does not mean costs are eliminated. There is the cost to prepare management objectives plans. The larger the area and the more diverse the size of farm operations the more time consuming and costly the process is. (Page A-16, Section 7.2)
- **Farm Evaluations Not Warranted** The requirement of “all irrigated agricultural operations (in Tier 1, Tier 2, or Tier 3) must complete a farm-specific evaluation and identification of their management practices and have the evaluation available for Board inspection.”, eliminates the cost savings potential in Tier 1 and Tier 2. (Page A-16, Section 7.3) Again monitoring results, the ratio of irrigated acres to the total watershed and pesticide use in a watershed are empirical proof of water quality not completing paperwork. (Footnote 8 on Page A8; "...relative amount of irrigated agricultural use compared to other land uses in the geographic area, and pesticide use.")

REGULATION WITHOUT REASON

- **Other Interested Stakeholders – Water Quality Management Plans** -Section 7.8 on Page A-19, provides other interested stakeholders regulatory authority without specifically defining the parameters or matters they can provide input on. Other interested parties (MRPP) should not be permitted to comment on **requests for changes in water quality management plans requiring Board or Executive Officer approval**. These are decisions the senior environmental scientists and Executive Director are trained and qualified to be making in the public interest.

- **Issuance of 13267 Orders** – At the end of the Section 7.7 on Page A-19 is language that is not consistent with the spirit of the existing program. The sentence reads, “Failure by a third party to submit a SQMP or GQMP that *receives Executive Officer approval* (emphasis added) will result in the issuance of 13267 Orders requiring the irrigated agricultural operations in the affected areas to submit the required reports and information.” There may be any number of reasons that an Executive Officer doesn’t approve the SQMP or GQMP, but individually regulating farm operations shouldn’t be used as leverage in finalizing these documents, sound science, water quality and economic considerations should be. If all the requirements of SQMP and GQMP are met sufficient information will have been submitted and 13267 Orders will be unnecessary.
- **Farm Evaluation is Duplicative of Information that already exists.** - Why, after the SVWQC has documented management practices in Source Evaluation Reports for pesticide and toxicity management plans, submitted the results of management practice surveys, after the Butte and Glenn County Agricultural Commissioners have provided further documentation of management practices not for just irrigated agricultural operations but ALL agricultural operations in several watersheds, and the University of California Cooperative Extension has documented management practices where there are no water quality issues, the Framework requires a Farm Evaluation for all agricultural operations is confusing to us, especially in Tier 1 areas. It either masks the Regional Board’s real intent to require Individual Farm Water Quality Management Plans, or simply reverses the intent to create flexibility in future Orders and returns to the “one size fits all” approach.

RECOMMENDATIONS

Farm Evaluations One of the most sensitive issues for growers and landowners is the control and privacy of any individual grower's information related to the administering of the ILRP. Because of this, the proposal to have participating members submit individual farm evaluations and other information directly to the Water Board is of great concern to our members. We understand that there are circumstances that may require the Water Board to verify information in these evaluations, and would make the information available for review by the Water Board as needed on a case specific basis. However, the information contained in individual farm evaluations should be managed by the Coalitions, and not by the Water Board as is implied in Section 6 of the Recommended Framework (page A-14). There are several reasons for this:

- The Coalition is required to provide the evaluation information to the Water Board in aggregate for assessment of specific geographic regions or commodities (page A-16, Section 7.3), so there is already a requirement for the Coalition to manage the information.

- Direct submittal of the information and management by the Water Board would undermine the ability of the Coalitions to serve their members, as well as undermining the little trust that exists between growers and the Regional Board, as a result of continually changing requirements in the ILRP, that have little basis in monitoring results.
- It would also require the Coalitions to request the data from the Water Board or to duplicate their efforts to manage the data.
- There is simply no regulatory value in making all of this member data freely available to the general public (as would be the case if it was managed by the Water Board).

We strongly urge the Water Board to allow Coalitions to continue to maintain and manage their own member data and to provide the Water Board with the information needed to assess and manage water quality.

Furthermore, It is our recommendation that the Framework on Page A-16, Section 7 *Management Plan and Practices Requirements*, number 3, Farm Evaluation, included the following language,

“If the management practices for the irrigated agricultural operations are not already documented then third parties would be required to compile and submit information on management practices in aggregate.”

The typical SVWQC grower’s perspective is the SVWQC water quality results show few and limited exceedances, which we are addressing in Management Plans, yet the program continues to change. Why?

The SVWQC has demonstrated a commitment to improving water quality. The SVWQC is beginning its 8th year of monitoring. During that time we have collected, analyzed and submitted to the Central Valley Regional Water Quality Control Board data on approximately 10,000 water quality samples. In the last two years **over 98% of our pesticide samples are below detection.** We have only had **one nitrate exceedance out of 826 nutrient analyses.** Toxicity is extremely rare in SVWQC waters, with **only one out of 75 sediment samples** testing high enough to trigger a pyrethroid analyses.

The SVWQC partnerships with County Agricultural Commissioners ensure effective enforcement when pesticide exceedances occur. The same close partnership with each of our subwatershed partners be they the local subwatershed group of growers, the local Farm Bureau, the Resource Conservation District, or the University of California Cooperative Extension ensures the effective management and financial resources to benefit water quality are available

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The SVWQC's program is achieving water quality goals in an economically and environmentally sustainable way. . It does not require the drastic change outlined in the Framework.

Sincerely,

A handwritten signature in black ink, appearing to read 'David J. Guy', with a large, stylized initial 'D'.

David J. Guy
President

Cc: Vice-Chairman Dr. Karl E. Longley
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